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267 NLRB No. 11

D--9817
Detroit, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

HIGGINS MANAGEMENT COMPANY AND
PHYLLIS THOMPSON d/b/a LELAND
HOUSE LIMITED PARTNERSHIP COMPANY

and

Cases 7--CA--20773 and
7--CA--21503

HOTEL, MOTEL, RESTAURANT EMPLOYEES,
COOKS AND BARTENDERS UNION, LOCAL 24

DECISION AND ORDER

Upon a charge filed on 9 June 1982 in Case 7--CA--20773 by Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, herein called the Charging Party, and duly served on Higgins Management Company and Phyllis Thompson d/b/a Leland House Limited Partnership Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issued a complaint and notice of hearing on 26 July 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Thereafter, upon a charge filed in Case 7--CA--21503 by the Charging Party on 2 December 1982, as amended on 15 December 1982, and duly served on Respondent, the

General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued an order consolidating cases, amended consolidated complaint and notice of hearing in Cases 7--CA--20773 and 7--CA--21503, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act, as amended.

The charge in Case 7--CA--20773 was filed on 9 June 1982 by the Charging Party and duly served on Respondent by certified mail on or about 11 June 1982. On 26 July 1982 the Acting Regional Director issued a complaint and notice of hearing, which was duly served on Respondent by certified mail on or about 27 July 1982. When no answer was filed, counsel for the General Counsel, by the Regional attorney for Region 7, on 25 August 1982, sent a letter advising Respondent that it had failed to timely file an answer to the complaint as required by the Board's Rules and Regulations and further informing Respondent of the consequences of its failure to timely file such answer; namely, the admission of each and every allegation in the complaint.

The charge in Case 7--CA--21503 was filed on 2 December 1982 by the Charging Party and duly served on Respondent by certified mail on or about 3 December 1982. The amended charge in Case 7--CA--21503 was filed on 15 December 1982 by the Charging Party and duly served on Respondent by certified mail on or about that same date. On 20 December 1982 the Regional Director issued an order consolidating cases, amended consolidated complaint and notice of hearing, which was duly served on Respondent by certified mail on

or about that same date. When no answer was filed, counsel for the General Counsel, by the Regional attorney for Region 7, on 26 January 1983, sent a letter advising Respondent that it had failed to timely file an answer to the consolidated complaint as required by the Board's Rules and Regulations and further informing Respondent of the consequence of its failure to timely file such answer; namely, the admission of each and every allegation in the complaint.

On 18 February 1983 counsel for the General Counsel filed directly with the Board ''Motions To Transfer Cases to the Board and for Default Judgment.'' Subsequently, on 24 February 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Default Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides, inter alia: ''All allegations in the complaint if no answer is filed . . . shall be deemed to be admitted to be true and shall be so found by the Board.'' As set forth above, Respondent has not filed

answers to the complaint in Cases 7--CA--20773 and 7--CA--21503. The time within which to file such answers having passed, we find all allegations in the consolidated complaint to be true. There being no issues in dispute, we hereby grant the Motion for Default Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

At all times material herein, Respondent, with an office and principal place of business in Detroit, Michigan, has been engaged in the operation of a hotel providing food and lodging for guests. During the calendar year ending 31 December 1981 Respondent, in the course and conduct of its business operations, derived gross revenues from all sources in excess of $1 million. During this same period, Respondent, in the course and conduct of its business operations, purchased goods and materials valued in excess of $10,000, which were shipped directly from points outside the State of Michigan to Respondent's Detroit, Michigan, location.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The following employees of Respondent constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Unit A

All full-time and regularly scheduled part-time housekeeping employees, maids, housemen and laundry employees employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding all managerial employees, guards and supervisors as defined in the Act, and all other employees.

Unit B

All front desk electric switch board operators, and front desk switch board operators employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees.

Since 11 May 1981 and 16 February 1982, and at all times material herein, the Charging Party has been the exclusive representative for purposes of collective bargaining for all the

employees in the units described above,[1] and has been, and is now, the exclusive representative of all the aforementioned employees with respect to their rates of pay, wages, hours, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.

From on or about 16 February 1982, and continuing until 15 September 1982, Respondent refused to bargain with the Charging Party by failing to meet with or respond to requests of the Charging Party for negotiations with respect to the wages, hours, and terms or conditions of employment of the employees in Unit B set forth above.

In or about January 1982, the Charging Party and Respondent reached full and complete agreement with respect to terms and conditions of employment of the employees in Unit A set forth above, to be incorporated in a collective-bargaining agreement between the Charging Party and Respondent. Since on or about 5 November 1982 the Charging Party has requested Respondent to execute a written contract embodying the agreement described above with respect to the employees in Unit A set forth above. Since on or about 5 November 1982 Respondent has failed and refused to execute a written contract embodying the agreement described above.

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[1] The record establishes that the Charging Party has been the exclusive representative for purposes of collective bargaining for all the employees in Units A and B above by virtue of certifications of representative issued by the Michigan Employment Relations Commission in Cases R--81 B--86 and R--81 J--346, respectively.

On the basis of the foregoing, we find that Respondent has, since on or about 16 February 1982, and continuing until 15 September 1982, refused to bargain with the Charging Party as the exclusive representative of the employees in the appropriate unit set forth above as Unit B, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. In addition, we find that since on or about 5 November 1982 Respondent has failed and refused to execute a written contract embodying a full and complete agreement previously reached by the Charging Party and Respondent with respect to terms and conditions of employment of the employees in Unit A set forth above, and that, by such refusal, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.[2]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[2] See H. J. Heinz Company v. N.L.R.B., 311 U.S. 514, 516 (1941).

V. The Remedy

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

With respect to Unit B set forth above, we shall order Respondent, upon request, to bargain collectively with the Charging Party as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

With respect to Unit A set forth above, we shall order Respondent to execute forthwith the collective-bargaining agreement containing the terms and conditions agreed upon by Respondent and the Charging Party, and to give effect to that contract retroactively from 5 November 1982, making employees whole for any losses they incurred as a result of Respondent's refusal to abide by the terms of such agreement.[3] Backpay is to be computed in a manner consistent with Board policy as stated in Ogle Protection Service, Inc., and James L. Ogle, an Individual, 183 NLRB 682 (1970), with interest thereon as set forth in Florida Steel Corporation, 231 NLRB 651 (1977).[4]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

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[3] See, generally, Western Truck Services, Inc., 252 NLRB 688 (1980).

[4] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

Conclusions of Law

1. Higgins Management Company and Phyllis Thompson d/b/a Leland House Limited Partnership Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, is a labor organization within the meaning of Section 2(5) of the Act.

3. The units appropriate for collective bargaining are:

Unit A

All full-time and regularly scheduled part-time housekeeping employees, maids, housemen and laundry employees employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding all managerial employees, guards and supervisors as defined in the Act, and all other employees.

Unit B

All front desk electric switch board operators, and front desk switch board operators employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees.

4. Since 11 May 1981 and 16 February 1982 the above-named labor organization has been and is now the exclusive representative of all employees in the aforesaid appropriate units for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing from on or about 16 February 1982, and continuing until 15 September 1982, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the

appropriate bargaining unit of all front desk electric switch board operators, and front desk switch board operators employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees, and by failing and refusing since on or about 5 November 1982, and at all times thereafter, to execute a written contract embodying the agreed-upon collective-bargaining agreement with respect to the terms and conditions of employment of the employees in the appropriate bargaining unit of all full-time and regularly scheduled part-time housekeeping employees, maids, housemen and laundry employees employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding all managerial employees, guards and supervisors as defined in the Act, and all other employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Higgins Management Company and Phyllis Thompson d/b/a Leland House Limited Partnership Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain collectively, upon request, with Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the following appropriate unit:

> All front desk electric switch board operators, and front desk switch board operators employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees.

(b) Failing and refusing to bargain collectively, upon request, with Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the appropriate unit described below by refusing to execute a copy of the agreed-upon collective-bargaining agreement. The appropriate collective-bargaining unit is:

> All full-time and regularly scheduled part-time housekeeping employees, maids, housemen and laundry employees employed by Respondent at its place of business located at 400 Bagley, Detroit, Michigan, but excluding all managerial employees, guards, and supervisors as defined in the Act, and all other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit set forth above at paragraph 1(a) with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Forthwith execute a copy of the collective-bargaining agreement which contains the terms which were agreed to between Respondent and the above-named labor organization with respect to the employees in the unit set forth above at paragraph 1(b).

(c) Bargain collectively with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit set forth above at paragraph 1(b) by giving effect to the terms and conditions of the above-described agreement retroactive to 5 November 1982.

(d) Make whole its employees for any loss of wages and other benefits which may have resulted from Respondent's unfair labor practices, and pay the appropriate interest on such amounts of money, as more fully described above in the section of this Decision and Order entitled ''The Remedy.''

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records,

social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Detroit, Michigan, copies of the attached notice marked ''Appendix.''[5] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent's immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. 8 August 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail or refuse to bargain collectively, upon request, with Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the following appropriate collective-bargaining unit:

> All front desk electric switch board operators, and front desk switch board operators employed by us at out place of business located at 400 Bagley, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT fail or refuse to bargain collectively, upon request, with the Union with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the appropriate bargaining unit described below by refusing to sign a copy of the previously agreed-upon contract with the Union applicable to these employees. The appropriate collective-bargaining unit is:

> All full-time and regularly scheduled part-time housekeeping employees, maids, housemen and laundry employees employed by us at our place of business located at 400 Bagley, Detroit, Michigan, but excluding all managerial employees, guards, and supervisors, as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain with the Union as the exclusive collective-bargaining representative of all employees in the appropriate bargaining units described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody

such understanding in a signed contract and WE WILL forthwith sign a copy of the contract which contains the terms which were agreed to between Respondent and the Union.

WE WILL bargain collectively with the Union by giving effect to the terms and conditions of the above-described contract retroactive to 5 November 1982.

WE WILL make whole all our employees in the appropriate unit described above who are covered by the terms and provisions of the aforesaid contract which we refused to sign and comply with, for any loss of wages and benefits they incurred as a result thereof, and we will pay appropriate interest on those sums of money.

HIGGINS MANAGEMENT COMPANY
AND PHYLLIS THOMPSON d/b/a
LELAND HOUSE LIMITED PARTNERSHIP
COMPANY

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226, Telephone 313--226--3244.